

THE HONORABLE RICARDO S. MARTINEZ

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON - SEATTLE

MID-CENTURY INSURANCE COMPANY,  
  
Plaintiff and Counter-Defendant,  
  
v.  
  
AMERICAN ECONOMY INSURANCE  
COMPANY,  
  
Defendant and Counter-Claimant.

NO.: 2:21-cv-00402-RSM

**STIPULATED MOTION TO STRIKE AND  
RE-SET THE TRIAL DATE OR, IN THE  
ALTERNATIVE, CONTINUE TRIAL AND  
PRE-TRIAL DEADLINES AND ORDER**

NOTE ON MOTION CALENDAR: February 1,  
2022

Complaint Filed: March 25, 2021  
Counter-Claim Filed: June 21, 2021  
Trial Date: August 1, 2022

**I. STIPULATED MOTION**

**A. Introduction**

Plaintiff Mid-Century Insurance Company ("Mid-Century") and Defendant American Economy Insurance Company ("American Economy") (jointly the "Parties") by and through their respective counsel of record submit this Stipulated Motion to Strike and Re-Set the Trial Date or, in the Alternative, Continue Trial and Pre-Trial Deadlines.

This matter is set for trial on August 1, 2022, and the Parties' Cross-Motions for Summary Judgment (the "Cross-Motions"), noted on the Court's calendar for November 19, 2021, are pending before the Court, and will determine whether trial is necessary. Pre-trial deadlines, including expert designations due February 2, 2022, discovery motions by March 4, 2022, and the discovery cut-off of April 4, 2022, are approaching. (Dkt. 14.) While the Court considers their Cross-Motions, the

**STIPULATED MOTION TO STRIKE AND RE-SET THE TRIAL  
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PRE-TRIAL DEADLINES & ORDER - 1**  
No.: 2:21-cv-00402-RSM

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Parties' respectfully request an order striking and re-setting the trial date, or alternatively, continuing trial.

This is an insurance coverage dispute regarding the Parties' obligation, if any, to defend their mutual insured Tahn Associates, LLC ("Tahn") in the Washington State Department of Ecology mandated cleanup of Tahn's property ("Property") located in Seattle Washington ("Ecology Claim").

By way of its Complaint, Mid-Century seeks a judicial declaration that American Economy owes a duty to defend Tahn and is liable to Mid-Century for amounts paid by Mid-Century for Tahn's defense which should have been paid by American Economy and that American Economy must contribute to Tahn's ongoing defense. The Parties issued identical commercial general liability policies of insurance and if American Economy owes no duty to defend Tahn, neither does Mid-Century.

American Economy denies it has any obligation to defend or indemnify Tahn against the Ecology Claim, and by its counterclaim seeks a declaration that American Economy has no obligation to reimburse, indemnify, or contribute to Mid-Century for Mid-Century's current or future expenses for defending and/or indemnifying Tahn against the Ecology Claim. (Dkt. 7, Counterclaim, ¶¶ 23, 29.)

The Parties filed early Cross-Motions, were noted for November 19, 2021, on the issues of the duty to defend and contribution by American Economy and are awaiting the Court's rulings.

#### **B. Procedural Background**

Litigation commenced on March 25, 2021 (Dkt. 1). Initial Disclosures were exchanged on July 14, 2021. On July 21, 2021, the Parties filed their Joint Status Report and Discovery Plan (Dkt. 13). On July 30, 2021, the Parties exchanged documents identified in their Initial Disclosures.

On August 6, 2021, the Court issued its Order Setting Trial Date and Related Dates ("Scheduling Order") setting Trial on August 1, 2022, and pre-trial deadlines (Dkt. 14).

The Parties agreed early dispositive motions could resolve the lawsuit prior to extensive discovery and trial, and stipulated to file early Cross-Motions for Summary Judgment (Dkt. 15). The Court issued an Order establishing the Cross-Motions were to be noted on the Court's calendar by

1 November 19, 2021 (Dkt. 16). Briefing is complete and the Cross-Motions are currently pending  
2 before the Court (Dkt. 17 - 33).

3 On January 19, 2021, the Parties contacted the Court pursuant to LCR 7(b)(5) to receive a  
4 status update regarding when the Court might issue a ruling. The Court was unable to provide an  
5 estimated time period for ruling and identified significant COVID-19 pandemic-related impacts on  
6 the Court's docket.

7 Under the current Scheduling Order, expert disclosures are due February 2, 2022, the deadline  
8 for discovery motions is March 4, 2022, and the discovery cut-off is April 4, 2022 (Dkt. 14).

9 Other than initial disclosures and initial productions of documents, the Parties have not  
10 conducted discovery while their Cross-Motions are pending and believe it is in the best interests of  
11 the Parties and the Court to continue to stay discovery and trial preparation until rulings are received  
12 on the Cross-Motions. Once the Court issues its rulings, the Parties will commence with discovery  
13 and prepare for trial (if necessary).

14 The Parties understand and appreciate the strain on the Court's resources created by the  
15 pandemic and the outcome of the Parties' Cross-Motions is likely determinative of the legal issues to  
16 be resolved in this case.

17 The Parties therefore stipulate and request the Court strike the August 1, 2022, trial date and  
18 re-set the trial date once the Court rules on the Parties' Cross-Motions. Striking the August 1, 2022,  
19 trial date provides the Court time to rule and a new trial date, which will likely be unnecessary, can be  
20 set following the Court's ruling.

21 Alternatively, the Parties stipulate and request a one-year continuance of the August 1, 2022  
22 trial date to August 1, 2023, and all dates set forth in the Court's Scheduling Order (Dkt. 14).

23 This is the first request for a trial continuance.

## 24 II. ISSUE PRESENTED

25 Whether the trial date and related pretrial deadlines should be stricken and re-set or continued  
26 for one-year while the Parties' Cross-Motions for Summary Judgment are pending before the Court  
27 and the outcome of the Cross-Motions will determine whether trial is necessary.

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1 **III. EVIDENCE RELIED UPON**

2 This motion is based upon the pleadings and records on file in this matter.

3 **IV. AUTHORITY AND ARGUMENT**

4 The Court has discretion to modify the case schedule for "good cause." Local Rules W.D.  
5 Wash. LCR 16(b)(6). "A court may modify a deadline for good cause. Fed.R.Civ.P. 6(b).  
6 Continuing pretrial and trial dates is within the discretion of the trial judge." *Dhunna v. Dep't of*  
7 *Homel & Sec.*, 2:21-cv-00720-BJR (W.D. Wash. Aug. 4, 2021) (citing *King v. State of California*,  
8 784 F.2d 910, 912 (9th Cir. 1986).

9 Good cause exists to strike the trial date and pre-trial deadlines. The Parties' Cross-Motions  
10 noted for November 19, 2021, are pending before the Court. The outcome of the Cross-Motions is  
11 determinative of the legal issues to be resolved in this case. Striking the August 1, 2022, trial date  
12 provides the Court time to rule. A new trial date will likely be unnecessary, but can be set following  
13 the Court's ruling. Striking the trial date is in the best interest of judicial economy, as the Parties and  
14 the Court will not expend resources litigating issues which may become moot (or the issues may  
15 change) depending on the Court's ruling. Alternatively, the same end can be achieved by continuing  
16 the trial date and all dates in the current Scheduling Order by one year.

17 The Parties believe it is in the Parties' and the Court's best interest to stay discovery and trial  
18 preparation while the Court considers the Cross-Motions.

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Good cause exists to strike the August 1, 2022, trial date and all related pre-trial deadlines and re-set them once the Court has ruled on the Parties' Cross-Motions. Alternatively, good cause exists to extend the trial date and related pre-trial deadlines by one-year, or the Court's first availability thereafter.

RESPECTFULLY SUBMITTED,

Dated: February 1, 2022

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**ORDER**

This matter having come before the Court upon the Parties' Stipulated Motion to Strike and Re-Set The Trial Date or, in the Alternative, Continue Trial and Pre-Trial Deadlines (the "Stipulated Motion"), and the Court having reviewed the Stipulated Motion and the records and files herein, and otherwise deeming itself fully advised, it is now, therefore:

ORDERED, ADJUDGED AND DECREED that the August 1, 2022, trial date and all pre-trial deadlines set forth in the Court's August 6, 2021, Order Setting Trial and Related Dates (Dkt. 14) are stricken. Trial and all related pre-trial deadlines shall be reset, if necessary, once the Court issues its rulings on the Parties' Cross-Motions for Summary Judgment.

DATED this 3<sup>rd</sup> day of February, 2022.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE